

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

Crl.MC.No. 3051 of 2006()

CC.232/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEYYATTINKARA
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PETITIONER:

1. SRI.SARASAN, AGED 65,
'MANGALYA', T.C.9/5-1, JAWAHAR NAGAR,
SASTHAMANGALAM VILLAGE, THIRUVANANTHAPURAM.
2. BEENA SARASAN, AGED 55,
W/O.SARASAN, DO. DO.

BY ADV. SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.NAVEEN.T

RESPONDENTS:

1. NOBERT LAWRENCE, MANAGING DIRECTOR,
AZHIMALA BEACH RESORTS PVT.LTD.,
AZHIMALA TEMPLE ROAD, PUNLINKUDY, CHOWWARA P.O.,
KOTTUKKAL VILLAGE, NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM DISTRICT.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 18/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3051 OF 2006

Dated this the 18th day of December, 2006.

ORDER

The petitioners who are accused 1 and 2 in a private complaint pending before the learned Judicial Magistrate of the First Class-II, Neyyattinkara have come before this Court with a prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings initiated against them. The said proceedings has been initiated against the petitioners and 5 workers – altogether 7 accused persons, alleging the commission of the offences punishable under Sections 447, 427 & 506(ii) read with 34 I.P.C.

2. The disputed facts can be narrated with the help of Annexure-A8 produced by the petitioners. According to the petitioners, there was a compound wall which was in existence along the line 'CRF'. The said compound wall came down on 02.10.2003. While the petitioners would contend that the nature had caused the said compound wall to fall, the complainant, ie. the 1st respondent herein contended that it was not a case of fall on account of operation of the forces of nature, but it was a case of the petitioners taking law into their own hands indulging in wanton acts of trespass and mischief. According to the 1st respondent, it was the petitioners who

along with their employees destroyed the compound wall which was in existence without any dispute for a long period of time.

3. According to the petitioners, they had approached the civil court and an order of injunction was obtained in their favour on 08.10.2003. They had approached the civil court with the prayer that the 1st respondent may not be permitted to put up the compound wall again. There was allegedly a violation of the said order of injunction by the 1st respondent herein and the petitioners in turn had filed a complaint before the police. An F.I.R was registered. Investigation was conducted. Final report has been filed alleging commission of the offences punishable inter alia under Sections 447, 427 read with 149 I.P.C. The said proceedings is pending before the same Court as C.C.No.927 of 2003.

4. The 1st respondent had thereupon come to the Court on 14.06.04 with the present private complaint. Prior to that, he had filed a complaint before the learned Magistrate on 4.12.2003 which was referred to the police under Section 156(3) Cr.P.C. The said complaint was referred by the police as false and it was thereafter that the 2nd respondent filed the present private complaint.

5. The learned Magistrate after, observing the statutory formalities, took cognizance of the offences alleged against the petitioners and others. The petitioners have now come before this Court with a prayer that the prosecution initiated against them may be quashed invoking the powers under Section 482 Cr.P.C.

6. What are the reasons ? The learned counsel for the petitioners builds up a case for quashing the proceedings on two specific reasons. First of all, it is alleged that the allegations raised against the petitioners are all false and that the police, after investigation, had really come to the correct conclusion of facts. In these circumstances, it is contended that the allegations being false, the prosecution initiated against the petitioners is liable to be quashed. Secondly it is contended that the civil case initiated by the petitioners has now been decided in favour of the petitioners as per Annexure-A9. Again, with reference to Annexure-A8, it is pointed out that the plot 'CDEF R' has been held to be belonging to the 2nd petitioner and the 2nd petitioner has been permitted to recover the possession of that item of property on the strength of title. In these circumstances, it is contended that, at any rate, even accepting all the allegations, the petitioners cannot be held to be guilty of the offences punishable under Sections 447 & 427 I.P.C. The learned counsel for the petitioners relies on the decision of this Court reported in **Pappu v. Damodaran** [1967 KLT 918] in support of his contention that, at any rate, these offences cannot be held to be committed by the petitioners.

7. The learned counsel for the respondent, on the contrary, submits that the civil dispute has not been finally resolved yet and against that, an appeal has already been preferred. The said appeal is pending. It is submitted that the petitioners are very influential

persons. They being influential with the police, have got the complaint filed by the 2nd respondent referred. At the same time the police have charge sheeted the case on the basis of the complaint filed by the petitioners. It is further pointed out that even going by the case of the petitioners, the compound wall along 'CRF' was the compound wall which existed and which separated the two properties. The suit was for recovery of possession and going by the averments in the suit itself, the plot 'CDEFR' was in the possession of the respondent on the date on which the alleged incident took place. The offences under Section 427 and 447 are offences against possession and settled possession of individuals cannot be permitted to be interfered with by use of powers and influence.

8. I shall scrupulously avoid any detailed discussion of the disputed facts or any expression of opinion on the acceptability of the rival contentions. I look at the planks on which the prayer is made to quash the proceedings. The first plank is that the allegations are not true and are false. Acceptability of the allegations or truth and falsity of the respective contentions are certainly not matters which can be resolved in proceedings under Section 482 Cr.P.C. It is impossible for this court at the present stage and with the available inputs to decide whether the allegations raised by the police against the 1st respondent in the case initiated by him or the allegations raised by the 1st respondent in this private complaint initiated by him against the petitioners are true/false. Suffice it to say that the alleged falsity of

the case of the respondent and the alleged truthfulness of the case of the petitioners cannot at this stage persuade the Court to invoke the powers under Section 482 Cr.P.C.

9. The next plank of the contention is that the civil court has already given a decree in favour of the petitioners to the effect that plot 'CDEFR' does belong to the petitioners, ie. the 2nd petitioner and that she is entitled to recover the same from the 2nd respondent. It is brought to my notice that an appeal has been preferred and the same is pending even though there is no interim orders passed in the said appeal. It is not disputed at all that till 2.10.2003, there was a boundary wall existing along the line 'CRF'. Even the decree of the civil court only recognizes that the petitioners are entitled to recover the property beyond the said line 'CRF'. There is nothing to come to a conclusion that a compound wall along 'CRF' was not existing on the date in question or that it had come down on account of operation of forces of nature. The very prayer is also only that recovery of property may be allowed, thereby unambiguously conceding the possession of the 1st respondent. The decree granted by the civil court cannot also in these circumstances at any rate persuade the Court to invoke the powers under Section 482 Cr.P.C. Was there a bona fide claim of right ? This is the next question to be considered. If a compound wall was in existence along 'CRF', notwithstanding the fact that the petitioners have been permitted to recover the property beyond the said compound wall, it cannot lightly be assumed that the

petitioners are entitled to demolish the wall as alleged. The civil court's decree cannot in these circumstances be of any crucial assistance at this stage. This Court cannot venture at this stage to concede any benefit of doubt to the petitioners on the question whether they did entertain the culpable frame of mind which would attract culpability under Section 447 & 4237 I.P.C.

10. In short, the conclusion appears to be inevitable that there is no justification in the prayer to invoke the powers under Section 482 Cr.P.C to quash the proceedings and to prematurely terminate the proceedings against the petitioners.

11. This CrI.M.C is, in these circumstances dismissed. I may hasten to observe that the dismissal of this CrI.M.C will not in any way fetter the rights of the petitioners to raise all appropriate contentions before the learned Magistrate at the appropriate stage. No expression of opinion made in this petition shall influence the learned Magistrate at later stages of the trial while considering the culpability.

(R.BASANT, JUDGE)

rtr/

